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Gray, 83; *Ely v. Thompson*, 3 A. K. Marsh (Ky.), 70. The decisions in these cases are based upon the reasoning of several courts which hold that after a statute is declared to be unconstitutional and void it is as if it had never been passed; that any rights depending upon such statute are of no effect; and that such statute affords no protection to one who has acted under it. *Norton v. Shelby Co.*, 118 U. S. 425, 441; *Osborne v. The Bank of the United States*, 9 Wheaton, 738; *Woolsey v. The Commercial Bank*, 6 McLean, 142; *Strong v. Daniel*, 5 Ind. 348; *Wyandotte v. Kansas City*, 5 Kan. App. 43. The tendency of the later decisions is to release inferior magistrates from such strict liability. They hold that when a complaint, alleging the breach of an ordinance, is presented to a magistrate he is required, before issuing a warrant, to pass judicially upon the validity of the ordinance and, having done so, an erroneous decision upon the subject is a mere mistake in judgment for which he is not liable. *Henke v. McCord*, 55 Ia. 378; *Brooks v. Mangan*, 86 Mich. 576.

LIFE ESTATE—WASTE—FORFEITURE.—Plaintiffs, as heirs at law, bring an action for waste against a widow in possession of her dower estate, under a statute providing that "A tenant for life is entitled to the full use and enjoyment of the property so that he exercises the ordinary care of a prudent man for its preservation and protection, and commits no acts tending to the permanent injury of the estate. For want of such care, and willful commission of such acts, he forfeits his interest." Held, the plaintiffs not having proved both voluntary and permissive waste were not entitled to a forfeiture. *Roby v. Newton* (1905), — Ga. —, 49 S. E. Rep. 694.

A minority dissented from this construction of the statute, which differs from the common law and from the statutes of every other state. At common law forfeiture was not inflicted for waste, and only guardians in chivalry, tenants in dower, and by the curtesy were liable in damages. II. BL. COMM. 283. The Statute of Marlbridge, 52 Hen. III. c. 23, extended the right of action to include tenants for life and years, and that of Gloucester 6 Edw. I. c. 5, provided for forfeiture of the thing wasted and treble damages. II. BL. COMM. 283. That these statutes never became part of the common law in the United States see *Smith v. Follinsbee*, 13 Me. 273; *Woodward v. Gates*, 38 Ga. 273; *Moore v. Ellsworth*, 3 Conn. 483. That they are in force, wholly or in part, see *Donald v. Elliott*, 11 Misc. 120; *Sackett v. Sackett*, 8 Pick. 309; *Sherrill v. Connor*, 107 N. Car. 630. Under the modern English rule a life tenant is not liable in damages for permissive waste. *In re Cartwright*, 41 Ch. Div. 532. The same rule exists in Kentucky, *Smith v. Mattingly*, 96 Ky. 228. Under the Iowa Code, § 4305, failure to prevent waste by use of reasonable care is equivalent to committing it. In Texas the civil law rule prevails, and the dower estate,—in nature a usufruct,—is unimpeachable for waste, *Higgins Oil Co. v. Snow*, 51 C. C. A. 267. A life estate may be forfeited for either permissive or voluntary waste in Oregon, Ann. L. § 337; R. I. Gen. L. Ch. 268; Ia. Code § 4303; Me. Rev. Stat. Ch. 103; Mass. Rev. L. Ch. 185; N. J. Gen. L. § 3748; N. Car. Code §§ 624 and 630; Ohio, Ann. Stat. § 4177; Indiana Annot. Stat. § 7094; N. Y. Co. Civ.

Pro. §§ 1651-59; while only for voluntary waste in N. Dak. Rev. Co. § 5921; Mo. R. S. § 4140; Neb. Comp. Stat. § 6232; Dela. Rev. Co. Ch. 88; Ky. Stat. § 2328; Minn. Stat. § 5882. In none of these states is forfeiture strictly a matter of right unless the waste was committed through malice. In some of them it is granted in the discretion of the court. In others when the damage equals two-thirds the value of the tenant's estate, while in still others, only when the damage is equal in value to the entire estate of the defendant.

MARRIAGE CONTRACT—MUTUALITY—BREACH OF PROMISE TO MARRY.—In an action for breach of promise to marry the complaint alleged that the plaintiff promised to marry the defendant on his request, and the defendant promised plaintiff to so marry her "on his request." Demurrer to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action was overruled. *Held*, on appeal, reversing the decision of the lower court and allowing plaintiff to amend with costs, that the agreement alleged was unenforceable for want of mutuality, defendant's engagement being a mere option to marry. *Smythe v. Greacen* (1905), N. Y., 91 N. Y., Supp. 450.

The agreement to marry is essentially different from any other contract known to the law. *Lewis v. Tapman*, 90 Md. 294-47 L. R. A. 385. There must, however, be mutuality. *Yale v. Curtiss*, 151 N. Y. 598; *Standiford v. Gentry*, 32 Mo. 477; *Kelley v. Riley*, 106 Mass. 339. The contract may be unwritten and unspoken but it must clearly appear that there was a mutual agreement and understanding to marry, either upon a day fixed, or within a reasonable time. *Olmstead v. Hoy*, 112 Ia. 349; *Blackburn v. Mann*, 85 Ill. 222; *Wagenseller v. Simmers*, 97 Pa. St. 465. Where a definite time is not fixed by the parties the law will imply a reasonable time. *Birum v. Johnson*, 87 Minn. 362; *Clark v. Reese*, 26 Tex. Civ. App. 619; *Bennett v. Bearn*, 42 Mich. 346. The decision in the principal case is controlled by the construction placed upon the complaint. The rule of common law pleading which provides that pleadings are to be strictly construed against the pleader (1 CHITTY, [16th Am. ed.] 261; *Clark v. Hanchett*, 40 Ill. App. 212; *Montgomery v. Hughes*, 65 Ala. 201; *Evans v. Collier*, 79 Ga. 315) appears to have been followed. The state of New York, however, has adopted the reformed procedure, one of the cardinal rules of which is that pleadings shall be liberally construed with a view to substantial justice. POMEROY CODE PLEADING (3rd ed.) § 546; *Seaboard Air Line v. Main*, 132 S. C. 445; *Olson v. Mfg. Co.*, 103 Wis. 337; *St. L. Ry. Co. v. Sweet*, 63 Ark. 563. The minority opinion while admitting that the complaint is ambiguous in statement and is inartificially drawn, contends that it is capable of a construction under which the required mutuality is made to appear and insists that the rules of the reformed procedure demand that where several constructions are possible that construction should be adopted which will support the pleading. This is undoubtedly the rule in the majority of the states where the reformed procedure obtains. *Baird v. Citizens' Ry. Co.*, 146 Mo. 265; *Guy v. McDaniel*, 51 S. C. 436; *Ben-olkin v. Guthrie*, 111 Wis. 554. But see contra: *Fox v. Mackay*, 125 Cal. 54; *Holmes v. Williams*, 16 Minn. 164; *Johnston v. Meaghe*, 14 Utah 426.